

---

No. 14-5121  
ORAL ARGUMENT NOT YET SCHEDULED

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

---

NATIONAL ASSOCIATION OF HOME BUILDERS; OLYMPIA MASTER BUILDERS; HOME  
BUILDERS ASSOCIATION OF GREATER AUSTIN; AND TEXAS SALAMANDER  
COALITION, INC.,

PLAINTIFFS-APPELLANTS,

v.

U.S. FISH & WILDLIFE SERVICE; AND S.M.R. JEWELL, IN HER OFFICIAL CAPACITY AS  
SECRETARY, U.S. DEPARTMENT OF THE INTERIOR,  
DEFENDANTS-APPELLEES.

---

**FEDERAL DEFENDANTS-APPELLEES' UNOPPOSED MOTION FOR 77-DAY  
EXTENSION OF TIME TO FILE ANSWERING BRIEF**

---

Pursuant to Fed. R. App. P. 26(b) and Circuit Rule 27(h), Federal  
Defendants-Appellees hereby move to extend the time to file their answering brief  
to and including February 23, 2015. Plaintiffs-Appellants do not oppose this  
motion. This is the first extension sought by Federal Appellees. For the following  
reasons, good cause exists for this extension:

1. Plaintiffs-Appellants' opening brief originally was due September 8,  
2014. Appellants requested and received a 60-day extension of time, to and  
including November 7, 2014, to file their opening brief. Federal Appellees'  
answering brief currently is due December 8, 2014.

2. This motion is necessary because counsel for Federal Appellees has a brief due on January 12, 2015, in a criminal case pending before the U.S. Court of Appeals for the Fifth Circuit. The opening brief in that case was filed on September 29, 2014. Counsel for Federal Appellees sought and obtained one extension of time to file the United States' answering brief in that case. The court has informed counsel for Federal Appellees that no further extensions of time are available. The case involves technical issues concerning the regulation of oil refineries under the Clean Air Act, as well as important issues concerning criminal enforcement of the Migratory Bird Treaty Act. The underlying district court case involved a 27-day criminal jury trial under the Clean Air Act and a 4-day criminal bench trial under the Migratory Bird Treaty Act. The district court docket contains more than 1000 entries and the official record on appeal is over 23,000 pages long. Counsel for Federal Appellees will need substantially all of his time between now and January 12, 2015, to master the record, coordinate with EPA, and prepare the answering brief in that appeal. Before filing, the United States' brief also must undergo substantial review and approval by the U.S. Department of the Interior and the Acting Assistant Attorney General for the U.S. Department of Justice's Environment and Natural Resources Division.

3. Counsel for Federal Appellees also has active mediations and appeal recommendations ongoing in three separate Ninth Circuit appeals. Those

mediations and appeal recommendations require counsel for Federal Appellees to prepare and respond to settlement offers, consult with agency and trial counsel concerning whether to maintain the government's appeal or settle, and prepare memoranda to the Acting Assistant Attorney General's Office and the Office of the Solicitor General. Counsel for Federal Appellees anticipates that those duties will occupy a significant amount of his time over the coming months based on schedules set by the Ninth Circuit's mediation office and clerk's office.

4. Counsel for Federal Appellees also has plans to spend time with his family during the upcoming Thanksgiving, Christmas, and New Year's holidays.

5. The above described circumstances demonstrate good cause for an extension of time. Given the circumstances summarized above, counsel for Federal Appellees will not be able to begin work on this case until January 12, 2015.

Federal Appellees therefore require the requested extension of time to ensure that their position in this case is fully briefed to this Court. Accordingly, Federal Appellees respectfully request an extension of time to and including February 23, 2015, to file their answering brief in this case.

6. Appellants do not oppose this motion. Because oral argument has not been scheduled, the proposed extension will not require any change in the oral argument date.

7. If this motion is granted, the following briefing schedule will apply:

November 8, 2014 Appellants' opening brief and appendix due

February 23, 2015 Federal Appellees' answering brief due

March 3, 2015 Appellants' reply brief due

Respectfully Submitted,

/s/ Nicholas A. DiMascio

Nicholas A. DiMascio  
Environment & Natural Resources Division  
U.S. Department of Justice  
999 18th St., Suite 370  
Denver, CO 80202  
(303) 844-1384

October 20, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on October 20, 2014, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/Nicholas A. DiMascio

Nicholas A. DiMascio

Environment & Natural Resources Division

U.S. Department of Justice

999 18th St., Suite 370

Denver, CO 80202

(303) 844-1384